Letter Contracts

Rabbanai T. Morgan
Chief, Contingency Contracting Element
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Letter Contracts

Overview

- Governing Directives
- Definition/Circumstances for Use
- Essential Elements
- Limitations
- Clauses
- Summary

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Governing Directives

- FAR 16.603
- DFARS 216.603-3/217.74
- AFFARS 5317.74
  - Appendix CC
    - CC-501 Expedited Contingency Procedures
    - Attachment CC-1, Deployment Kits

Letter Contracts

- Letter Contract:
  - A written preliminary contractual instrument that authorizes the contractor to begin immediately ***manufacturing*** supplies or performing services.

- Circumstances for Use:
  - Government's interests demand that the contractor be given a binding commitment so that work can start immediately and
  - Negotiating a definitive contract isn't possible in sufficient time to meet the requirement. However, a letter K should be as complete and definite as feasible under the circumstances.

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- Essential Elements
  - Price ceiling if based on price competition
  - Negotiated definitization schedule
    - ***Dates for submission of price proposal***
    - Required cost or pricing data
    - Make-or-buy & subcontracting plans
    - ***Date for start of negotiations***
    - ***Target date for definitization (earliest practicable date)***
      - 180 days after date of Letter K/40% completion of work

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- Essential Elements
  - Maximum liability of the Gov’t - 52.216-24
    - Estimated amount necessary to cover the contractor's requirements for funds before definitization.
    - NTE 50% of the estimated cost of the definitive contract unless approved in advance by the official that authorized the letter contract.
  - Appropriate priority rating

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- Limitations
  - Requires D&F by HCA/Designee
    - Shall not exceed availability of funds at time of execution
    - Shall comply with competition requirements
    - Shall not be amended to satisfy new requirement
      - unless new requirement is inseparable from original requirement
      - new requirement subject to same requirements and limitations

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- Limitations
  - Final price negotiation after a substantial portion of the required performance has been completed
    - HCA shall ensure the profit allowed reflects contractor's

      actual risk for costs incurred for performance before final

      price negotiation and through performance of the

      remainder of the contract

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- FAR Clauses
  - As required by for the type of definitive contract contemplated and any additional appropriate clauses
  - 52.216-23, Execution and Commencement of Work, (may be omitted from letter Ks awarded on SF 26)
  - 52.216-24, Limitation of Government Liability IAW (16.603-2(d))

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- DFARS Clauses
  - 252.217-7027, Contract Definitization, in all UCAs & associated solicitations IAW its prescription at 217.7406(b), vs. FAR 52.216-25
    - If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.403-1, 15.403-2, or 15.403-3 for not requiring submission of cost or pricing data, the words "and cost or pricing data" may be deleted from paragraph (a) of the clause.

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